IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

D.B. CIVIL WRIT PETITION NO.6921/2005
(Union of India & Ors. Vs. Shri Bhanwar Singh & Anr.)

D.B.CIVIL WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA

Date of Order : 09th August, 2007

P R E S E N T

HON'BLE MR. JUSTICE P.B. MAJMUDAR
HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. V.K.Mathur for the petitioners.
Mr. S.P.Sharma for the respondents.

BY THE COURT : (PER MAJMUDAR,J.)

This writ petition is directed against the order dated 02.08.2005 passed by the Central Administrative Tribunal, Jodhpur in O.A.No.24/2003, by which, the Tribunal has allowed

the application of the present respondent No.1 and it is held that the respondent No.1 is entitled to get the benefit of ACP Scheme with effect from 9.8.1999 i.e. the date from which the Scheme was introduced. The grievance of the respondent No.1 in the O.A. was that though he was entitled to get the said benefit but the same was not given to him. The case of the respondent No.1 is that he was initially appointed as Lineman on 13th January, 1983. The said post was re-designated as Electrical H.S.III (sic. H.S.II). The respondent No.1 appeared in the trade test conducted for further promotion to the post of H.S. II in the year 1987 but he failed. Subsequently, the Department introduced a Scheme for up-gradation, which is known as A.C.P. Scheme. The same was introduced with effect from 9.8.1999. The said scheme provides for two financial up-gradations on completion of 12/24 years of service and on fulfilling the other eligibility conditions meant for promotion to the next post provided that he did not enjoy the normal promotion. It is the case of the respondent No.1 that certain conditions are prescribed in the said Rules to the effect that in case one passes the trade test in the first attempt then he will get the due benefit under the said Scheme from the date of the Scheme or the date one completes 12 years of service but in case one does not pass the trade test in the first attempt, the benefit would be granted only from the date one passes the trade test. The Tribunal while

relying upon its earlier decision given in the case of Gurlal Singh Vs. Union of India & Ors. delivered in O.A.No. 65/2004 came to the conclusion that the controversy in the present case is squarely covered by the said decision. In the said decision, the Tribunal has taken a view that the clarification issued by the Department which provides for failing of the trade test prior to cut off date including that of non-appearing was struck down. The Tribunal while relying upon the said decision has allowed the Original Application filed by the present respondent No.1 and the present petitioners were directed to extend the benefits of first financial up-gradation under the A.C.P. Scheme to the present respondent No.1. with effect from 9.8.1999 with all consequential benefits. The said order is challenged by the petitioners in the present writ petition.

Learned counsel Mr. V.K.Mathur submitted that the Division Bench of this Court in D.B.Civil Writ Petition No.6634/2005 (UOI & Ors. Vs. Shri Gurlal Singh & Anr.) has upheld the vires of the said clarificatory Circular issued by the DOP&T, which was struck down by the Tribunal in Gurlal Singh's case. Gurlal Singh's decision itself was challenged in the said D.B.Civil Writ Petition No.6634/2005. Relying on the said decision, learned counsel Mr. Mathur submitted that since respondent No1. had appeared in the trade test in the past and

having failed, he was not eligible for getting benefit of the Scheme of 1999. It is submitted that in view of the clarificatory Circular issued by the DOP&T in 2001, the respondent No.1 was entitled to get the benefit of the Scheme only after passing the trade test, which he has passed in 2001 and, therefore, he was not entitled to get the benefit from 9.8.1999. On the other hand, learned counsel Mr. S.P.Sharma submitted that the statutory Scheme of 1999 cannot be clarified or modified by a Circular.

We have heard learned counsel for the parties. It is true as argued by learned counsel Mr. Mathur that the clarificatory Circular has been upheld by the decision of the Division Bench of this Court passed in D.B.Civil Writ Petition No.6634/2005 and the Administration is required to follow the same. However, it is required to be noted that the respondent No.1 herein was not given any opportunity worth the name to appear in the trade test after the introduction of the Scheme of 1999. It is also required to be noted that on the introduction of the said Scheme in 1999 i.e. the Scheme was introduced on 9.8.1999, no trade test was taken by the Department for considerable period even though the Scheme provides that the trade tests are to be taken regularly after every six months. Such trade tests were not taken on the ground that there was no vacancy. However, at first available opportunity, when the trade test was taken in the

year 2001, the respondent No.1 appeared in the same and he cleared the said trade test.

Considering the said aspect of the matter, we would not like to interfere with the order of the Tribunal. The Tribunal has rightly found that the respondent No.1 was entitled to get the benefit of the said Scheme as he was eligible to appear in the trade test but no such trade test was taken till year 2001. It is no doubt true that clarificatory Circular provides that if a candidate has failed earlier, he shall not be entitled to get such benefit unless he passes the trade test. However, when it is an admitted fact that between year 1999 to 2001, no trade test was taken, the Department was not justified in denying the benefit on the ground that the respondent No.1 appeared and failed in the trade test in the year 1987, as it was the duty of the Department to take such trade test periodically, the moment Scheme was introduced on 9.8.1999. In our view, the respondent No.1 cannot be denied the benefit of the Scheme of 1999 especially when the Scheme itself provides for regular trade tests at the interval of every six months and especially when the petitioners have not been in a position to satisfy as to why the trade tests were not taken for such a long time. The order of the Tribunal is not required to be interfered with in our extra ordinary jurisdiction under Article 227 of the Constitution

of India. There is one more reason for not interfering with the order of the Tribunal and the same is that the learned counsel Mr. S.P.Sharma appearing for respondent No.1 submitted that his client will not ask for monetary benefits for the period from 1999 to 2001 and the said period may be treated only for notional benefits as ultimately the respondent No.1 can get benefit of the same for his future prospects.

Accordingly, we hold that the respondent No.1 shall be entitled only to notional benefits for the period between 1999 to 2001 and the period between introduction of the Scheme and passing the trade test by the respondent No.1 should be treated as notional and no actual monetary benefit will be given to the respondent No.1 for the said period. However, we may also make it clear that this order is passed in the peculiar facts and circumstances of this case and the same will have no bearing on any other case. This order is passed after considering that since for a long time, no trade test was taken by the Department. In view of the contention of the learned counsel Mr. S.P.Sharma that respondent No.1 will not ask for any monetary benefits for the period between 1999 to 2001, we uphold the decision of the Tribunal dated 02.08.2005 with a rider that respondent No.1 shall not be entitled to have any monetary benefit for the intervening period and the said benefit will be treated as notional

benefits.

Subject to what we have stated above, this petition stands disposed of with no order as to costs.

(DEO NARAYAN THANVI),J. **(P.B.MAJMUDAR),J.**

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